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SUBJECT: GOT DECIDES TO TAKE OVER BOT COMPANIES

REF: A. ANKARA 6423

[B](#). ANKARA 4386

[C](#). ANKARA 6538

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[1](#). (SBU) Summary. The longstanding disputes between Build Operate Transfer (BOT) electricity generation plants and the Turkish government may have reached a new level due to the government's apparent decision to take over these facilities on what appears to be the presumption of corruption. According to local press reports on October 21, the Ministry of Energy (MENR) is planning to take over four BOT electricity generation plants, including two owned by US investors, ENRON and Doga Edison Mission, with OPIC and EXIM support. Energy Minister Guler is quoted as saying that the government took action because of corruption in the establishment of these facilities and due to high electricity prices. Both ENRON and Doga told us that they learned about the decision for the first time from the press and have not yet been officially notified by any of the Turkish authorities. The Energy Market Regulatory Authority (EMRA) told us that they are not aware of any plans to "seize" or "take over" BOT companies as reported by Hurriyet newspaper and maintains that they are responding to BOT companies' applications for licences. Post is seeking additional information. End Summary.

[2](#). (SBU) On October 21, two leading Turkish newspapers, Hurriyet and Milliyet, reported that the MENR was planning to take over four BOT plants: ENRON's Trakya Electricity (US), Doga Edison Mission's Esenyurt Natural Gas facility (Capan family), Unimar's Marmara Ereglisi-Unimar (Japanese), and Gebze Dilovasi (Ova Electricity). Energy Minister Guler told Hurriyet that the decision followed the State Auditing Board's report, which concluded that there was corruption in the establishment of these facilities. Guler said that the problems were very complex; the investment costs were exaggerated, the contracts violated, and the costs of loans were overstated, all of which contributed to high energy prices.

[3](#). (SBU) Guler stressed that the MENR has prepared alternative strategies depending on the BOT companies' response, including international arbitration. He said that the cost of arbitration would be bearable but he believed that most of the companies will not seek international arbitration and risk ruining their reputation with corruption charges. Guler said that the MENR was waiting for (EMRA) to comment on this matter. (Note: The MENR and EMRA have been at odds on how to deal with BOT companies as reported in refel A.) EMRA officials told us that it is not party to any government decision to take over BOT companies, while stressing that EMRA continues to review BOT companies' applications for licensing. Guler also reportedly expressed regret that a compromise could not be reached and warned that BOT facilities could go through a similar process as Cukorova and Kepez Electricity, both owned by the notorious Uzan family. (refel B). At the same time, EMRA told us that BOT contracts are not concession contracts and cannot be compared to the Cukorova case, which was seized because the company refused to transfer transmission assets to the State as required by the Electricity Law. Guler insisted that Turkey would no longer consider BOT projects but remain interested in establishing new electricity generation facilities with the BO model. When asked about what such action means for Turkey's reputation in the international community, Guler said allegations of corruption would be bad for the companies reputation.

14. (SBU) Econspecialist contacted the MENR for confirmation, and they did not deny the content of the press reports. MENR's Press Dept Head said that the Ministry had not issued a press release on the story, while confirming that the newspapers were granted a private interview with Minister Guler on October 20. We also called both ENRON and Doga for a response: ENRON's executives currently are all in London attending a Board meeting, but the General Manager denied the corruption charges and told us that ENRON has not yet been notified by the MENR. ENRON's GM questioned whether the GOT would eventually seize the facility as in the Cukorova case and wondered if the Hurriyet article was referring to the government's early buyout option. He speculated that the MENR may be trying to force EMRA to negotiate conditions to issue licenses but it could also be a message to the companies to lower their prices. He asked us to share any info we receive from EMRA. Doga also told us that they have not been contacted.

15. (SBU) The lawyer of one of the BOT companies also said he had no prior notification from either EMRA or the MENR. He said that the Milliyet article, which does not quote the Minister directly, gives a clearer explanation of the government's decision. Milliyet reported that the GOT decided to take action for early transfer of the BOT facilities back to the government. According to Milliyet, a high level EMRA official said that the BOT companies could not reach a compromise with the GOT on the electricity prices after a year of discussion, and the GOT would take over these facilities. The official said EMRA was planning to start the takeover process in mid-November. He added that EMRA would first prepare a list of suggestions for the companies to comply with and would give the companies 1-2 months to revise their contracts. The companies, which failed to revise the contracts, will be asked to transfer the facilities to the government early.

16. (SBU) According to the Hurriyet report, the MENR is relying on the State Auditing Board's report on BOT, Build-Operate (BO), and Transfer-Operating-Rights (TOR) projects, which was released on October 17, to justify the impending take over. The report states, for example, that there was no feasibility study for any of these projects. It claims that for some projects transfer costs that the MENR is obligated to pay upon transfer of the facility to the government is different for BOT facilities with similar cost structures. The report also claims that the MENR had signed contracts without any knowledge of the BOT's total investment costs and financial plans and wrongly assumed all of the risks. The State Auditing Board concluded that these problematic contracts keep energy prices high and are a major impediment to creating a free energy market. The report also criticizes the energy forecasts that the Energy Ministry at that time had made and contends that those faulty decisions have resulted in an excess supply of natural gas and excessive use of natural gas in domestic production as well. (Reftel C notes this government's preference for indigenous energy sources over natural gas.)

17. (SBU) Background. According to the terms of the contracts, these BOT companies are guaranteed a set price for every unit of electricity generated; however, the terms of contract have been under dispute for a couple of years. The GOT wants the companies to lower electricity prices, and some companies have expressed a willingness to do so (reftel A). Ankara envisions a liberalized electricity market with no long-term contracts and has been seeking ways to eliminate these expensive contracts. The main problem is that the GOT cannot afford the early buy-out option and would have to wait until 2009 when it can take over these companies at no cost. These BOT contracts are performance contracts so during any arbitration process the companies are legally obligated to continue operations and Turkey is obligated to continue paying for the electricity generated.

18. (SBU) Comment. This is yet another example of the problems foreign companies operating in Turkey face, and the GOT's action continues to raise questions about Turkey's commitment to the rule of law and attracting further foreign investment. The takeover decision reflects the Justice and Development Party's (AK) determination to crack down on corruption and also could give the GOT a way out of longterm expensive contracts. Another complaint that we constantly hear from BOT companies is that this government does not understand the terms of the contract. End Comment.

